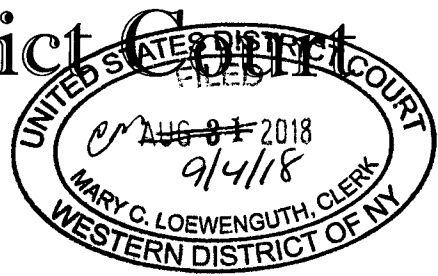


United States District Court

for the
Western District of New York



United States of America

v.

Case No. 18-MJ- 4128

ERIC A. BIRKEDAHN

Defendant

CRIMINAL COMPLAINT

I, CHRISTOPHER TOSCANO, Task Force Officer with the United States Federal Bureau of Investigation, the complainant in this case, state that the following is true to the best of my knowledge and belief:

On or about and in between March 2, 2017 and the Present, in the Western District of New York, the defendant ERIC A. BIRKEDAHN violated Title 18 U.S.C. §§ 2252A(a)(2)(A) and 2252A(a)(5)(B), offenses described as follows:

the defendant did knowingly receive and possess child pornography that had been shipped or transported using any means or facility of interstate or foreign commerce or had been shipped or transported in or affecting interstate or foreign commerce by any means, including by computer, in violation of Title 18, United States Code, Section 2252A(a)(2)(A), and Title 18, United States Code, Section 2252A(a)(5)(B).

This Criminal Complaint is based on these facts:

SEE ATTACHED AFFIDAVIT OF CHRISTOPHER TOSCANO, Task Force Officer, F.B.I.

☒ Continued on the attached sheet.

Christopher Toscano

Complainant's signature

CHRISTOPHER TOSCANO, TFC, S.A., F.B.I.

Printed name and title

Sworn to before me and signed in my presence.

Date: Sept. 4, 2018 at 2:05 pm

Marian W. Payson

Judge's signature

City and State: Rochester, New York

MARIAN W. PAYSON, United States Magistrate Judge

Printed name and title

18.mj - 4/28

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

I, CHRISTOPHER TOSCANO, being duly sworn, depose and state:

1. I am a sworn Task Force Officer with the Federal Bureau of Investigation and a Deputy with the Monroe County Sheriff's Office. I have been a member of the Monroe County Sheriff's Office since February of 2012, and assigned to the Federal Bureau of Investigation, Child Exploitation Task Force, since March of 2017. I am trained to investigate and have participated in investigations involving a wide range of state and federal criminal violations. In my position with the FBI Child Exploitation Task Force, I am responsible for investigating crimes against children, including the distribution, receipt and possession of child pornography, in violation of Title 18, United States Code, Sections 2252A(a)(2)(A) and 2252A(a)(5)(B).

2. The information contained in this affidavit is based upon my personal knowledge and observation, my training and experience, conversations with other law enforcement officers, and the review of documents and records. This affidavit is submitted in support of the attached criminal complaint charging ERIC A. BIRKEDahl (BIRKEDahl) with receipt and possession of child pornography, in violation of Title 18, United States Code, Sections 2252A(a)(2)(A) and 2252A(a)(5)(B).

3. Because this affidavit is submitted for the limited purpose of establishing probable cause to secure a criminal complaint, I have not included every fact known to me

concerning this investigation. Rather, I have set forth only the facts that are necessary to establish probable cause to believe that BIRKEDahl did violate Title 18, United States Code, Sections 2252A(a)(2)(A) and 2252A(a)(5)(B).

CHILD PORNOGRAPHY AND PEER TO PEER SHARING

4. A continuing phenomenon on the Internet is peer to peer file sharing (hereinafter, "P2P"). P2P file sharing is a method of communication available to Internet users through the use of special software designed specifically to allow users to trade digital files through a worldwide network formed by linking computers together. After installing the P2P software, a user can take certain steps to share files.

5. The computers that are linked together to form the P2P network are located throughout the world; therefore, the P2P network operates in interstate and foreign commerce. A person that shares files containing child pornography is "hosting" child pornography and therefore potentially distributing child pornography in violation of Title 18, United States Code, Section 2252A(a)(2)(A).

BACKGROUND OF INVESTIGATION

6. On December 25, 2017, an FBI Task Force Officer (TFO), while working in an undercover capacity, connected to a certain P2P network using a law enforcement created program. The TFO's computer connected to a digital device utilizing IP address 98.10.58.50 and downloaded video files directly from that device containing child pornography. I reviewed the files and describe two as follows:

- a) **"969A4C42F1BFE7FE0354ACDA01F3264A.avi"** – A video showing a female, approximately 9 years old. The child is naked and lying on a bed. The child's hands are tied together and her feet are tied apart so that her vagina is exposed in a

lascivious manner. As the video progresses, a dog enters the screen and begins to lick the child's vagina.

b) "0A5D6C352C32632AA0AE4213FDD639BC.divx" – A video showing an approximately 10 year old female. The child is naked, sitting on a toilet, and smoking a cigarette. Her vagina is exposed in a lascivious manner.

Based upon your affiant's training and experience in the investigation of child pornography cases, these videos constitute child pornography, as defined by Title 18, United States Code, Section 2256(8).

7. A subpoena return from Charter Communications revealed that the subscriber of IP address 98.10.58.50 on December 25, 2017 was Eric Birkedahl, at 44 Bastian Rd., Rochester, NY 14623.

8. On March 27, 2018, an FBI Task Force Officer (TFO), while working in an undercover capacity, again connected to a certain P2P network using a law enforcement created program. The TFO's computer again connected to a digital device that was hosting child pornography utilizing the same IP address, 98.10.58.50. The TFO downloaded the following video file directly from that device:

a) "!!! NEW !!! (Pthc) LPVD 4yo cocked (2017 01 1217 58 17 UTC).mpg" – A video showing an approximately 5 year old female wearing a light-colored sweater and no pants or underwear. An adult male is seen penetrating the female's vagina with his penis. The male is then seen performing oral sex on the female.

Based upon your affiant's training and experience in the investigation of child pornography cases, this video constitutes child pornography, as defined by Title 18, United States Code, Section 2256(8).

9. A second subpoena return from Charter Communications revealed that Eric Birkedahl remained the subscriber of IP address 98.10.58.50 on March 27, 2018 at 44 Bastian Rd., Rochester, NY 14623.

10. Based on the above, on June 5, 2018, the Hon. Marian W. Payson granted a search warrant for the premises at 44 Bastian Rd., Rochester, NY 14623.

11. On June 18, 2018, members of the FBI executed the search warrant at 44 Bastian Rd. When Agents arrived at the residence, it appeared as if no one was home. In order to gain access to the residence, Agents spoke with the owner of 44 Bastian Rd. by phone and informed her of the search warrant. The homeowner indicated that she was out of town, but agreed to assist Agents in securing a key from a neighbor. When asked if anyone else lived in the house, the homeowner indicated that BIRKEDAHN and another friend maintained bedrooms in the home. The homeowner identified BIRKEDAHN's room, which was located on the second floor of the home. A neighbor ultimately arrived and Agents were able to locate a key to enter the home and execute the warrant.

12. During the execution of the search warrant, BIRKEDAHN returned to the home at which point I engaged him in a non-custodial interview. In sum and substance, BIRKEDAHN admitted that he was involved with child pornography. When asked how long BIRKEDAHN has been "struggling" with child pornography, BIRKEDAHN stated "5 or 6 years." When asked what got BIRKEDAHN into child pornography, BIRKEDAHN stated "I honestly couldn't tell ya." When asked if BIRKEDAHN knew that this stuff (child pornography) is illegal, BIRKEDAHN stated "I do." When asked if BIRKEDAHN masturbates to the child pornography that he receives, BIRKEDAHN stated "I do but I again I realize that you can't like it's not subsumable to do in real life." When asked what programs

BIRKEDAHL used to receive the child pornography BIRKEDAHL stated “eMule.” Based on my training and experience, I know that eMule is a P2P program through which perpetrators trade child pornography among other material.

13. During the interview, I showed BIRKEDAHL a series of individual screenshots of the child pornography videos obtained by the undercover TFO from BIRKEDAHL’s IP address. BIRKEDAHL admitted that he recognized one of the video screenshots.

14. When asked how many computers BIRKEDAHL used to receive child pornography, BIRKEDAHL stated “just one.” BIRKEDAHL then verbally described the location of his bedroom and the computer that he used to possess child pornography. Agents seized the computer described by BIRKEDAHL from his room and transported it to the FBI Rochester Office.

15. On June 18, 2018, I reviewed BIRKEDAHL’S computer using a verified write blocker. I observed that the hard drive contained within the computer contained approximately 4,000 videos of child pornography and approximately 190 images of child pornography. Some examples include:

a) **“(PTHC 2013 PTXX OPVA) 6yo april 2013 first facial (More Please(HD))”** – A video approximately 45 seconds in length, which shows, among other things, a female approximately 6 years old performing oral sex on an adult male and the male ejaculating on the child’s face. Data associated with this video indicated that it was created and accessed on the hard drive on 3/2/17.

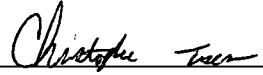
b) **“[pthc] 2yo girl babyshi crying during anal opva 2014 3yo 4yo 5yo loli child”** – A video approximately 1 min 30 seconds in length, which shows, among other things, an adult male performing anal sex on a female approximately 2 years old. The male is then seen ejaculating onto the back of the girl. Data associated with this video indicated that it was created and accessed on the hard drive on 3/2/17.


c) **“PTHC – 4yo Blowjob & oCS,swallow(2012,Best!)”** – A video approximately 38 seconds in length, which shows, among other things, a female approximately 4 years old performing oral sex on an adult male. The male is then seen ejaculating on the child. Data associated with this video indicated that it was created and accessed on the hard drive on 11/16/17.

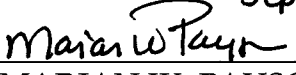
16. The trade inscription “PRODUCT OF MALAYSIA” appears on the subject hard drive contained within the defendant’s desktop computer. The internet and P2P network through which BIRKEDAHL obtained his child pornography is a means and facility of interstate and foreign commerce.

CONCLUSION

Based upon the forgoing, the undersigned respectfully submits that there is probable cause to believe that that ERIC A. BIRKEDAHL did violate Title 18, United States Code, Section 2252A(a)(2)(A) and Title 18, United States Code, Section 2252A(a)(5)(B).


CHRISTOPHER TOSCANO
Task Force Officer
Federal Bureau of Investigation

 Subscribed to and sworn before me
this ~~5th~~ day of ~~August~~ ^{Sept.} 2018.


MARIAN W. PAYSON
United States Magistrate Judge